# MINUTES FOR THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

### **September 30, 2009**

### **DIVISION ONE**

B206471 People (Not for Publication)

v.

Wilson

The judgment is modified to reflect a conviction of attempted second degree robbery on count 6, attempted petty theft on count 7, petty theft on count 8, and attempted petty theft on count 9. In all other respects, the judgment is affirmed. The matter is remanded for resentencing consistent with this decision.

Mallano, P.J.

I concur: Rothschild, J.

I concur and dissent: Ferns, J. (Assigned) (Opinion)

B206066 Oravecz (Not for Publication)

v.

New York Life Insurance Co., et al.

The order sustaining New York Life's demurrer to the breach of fiduciary duty claim is reversed, and the matter is remanded to the trial court for further proceedings on that cause of action. In all other respects, the judgment is affirmed. Each party shall bear its own costs on appeal.

Weisberg, J. (Assigned)

We concur: Mallano, P.J.

Rothschild, J.

#### **DIVISION TWO**

B211882 Los Angeles County, D.C.F.S. (Not for Publication)

v. J.M.

The order is affirmed.

Ashmann-Gerst, J.

We concur: Boren, P.J.

Chavez, J.

B214140 Los Angeles County, D.C.F.S. (Not for Publication)

v. L.L.

The juvenile court's order is affirmed.

Ashmann-Gerst, J.

We concur: Boren, P.J.

Chavez, J.

B209148 Johnson (Not for Publication)

V.

Rley & Reiner, et al.

The judgment of the trial court is affirmed. Respondents are entitled to

costs on appeal.

Ashmann-Gerst, J.

We concur: Boren, P.J.

Chavez, J.

#### **DIVISION TWO (continued)**

B213982 Larry Gurney, Jr. (Not for Publication)

v.

Spartan Funding Group, et al.

The judgment is affirmed. Spartan and Bergstein are entitled to recover their costs on appeal.

Ashmann-Gerst, J.

We concur: Boren, P.J.

Chavez, J.

B213237 People (Not for Publication)

v. M.G.

The finding that appellant's offenses are felonies is reversed and the order appealed from is modified to characterize the adjudicated offenses as misdemeanors, and is otherwise affirmed.

Ashmann-Gerst, J.

We concur: Boren, P.J.

Doi Todd, J.

B207169 People (Not for Publication)

v.

R.M., et al.

As to each minor, the juvenile court's orders shall be modified to reflect an adult maximum confinement period of 19 years four months. As to R.M., we strike the juvenile court's order restraining R.M. from associating with any gang members as an unauthorized order. In all other respects, the juvenile court's orders are affirmed.

Ashmann-Gerst, J.

We concur: Doi Todd, Acting P.J.

Chavez, J.

# **DIVISION TWO (continued)**

B209677 People (Not for Publication)

v.

Bustamante

The judgment is affirmed.

Ashmann-Gerst, J.

We concur: Doi Todd, Acting P.J.

Chavez, J.

B214436 People (Not for Publication)

v.

Cooper

The Court:

The judgment is affirmed.

Boren, P.J., Ashmann-Gerst, J., Chavez, J.

B206441 Gullwing International Motors, LTD.

v.

Anton Ostermeier et al.

Filed order modifying opinion. (No change in the judgment)

#### **DIVISION FOUR**

B204494 People (Not for Publication)

v.

White

The judgment is affirmed.

Manella, J.

We concur: Epstein, P.J.

Willhite, J.

B211686 People (Not for Publication)

v. R.C.

The dispositional order is modified to reflect 26 days of predisposition credit and to strike the maximum term of confinement. In all other respects the order of wardship is affirmed.

Willhite, J.

We concur: Epstein, P.J.

Manella, J.

B211001 People (Not for Publication)

v. D.P.

The maximum period of confinement is ordered stricken from the clerk's minute order. In all other respects the order of wardship is affirmed.

Manella, J.

We concur: Epstein, P.J.

Suzukawa, J.

### **DIVISION FOUR (continued)**

B207496 People (Not for Publication)

v.

Amaya

The cause is remanded to the trial court for resentencing and in all other respects the judgment is affirmed.

Epstein, P.J.

We concur: Willhite, J.

Manella, J.

B207091 People (Not for Publication)

v.

Henderson et al.

The trial court is directed to prepare and forward to the Department of Corrections and rehabilitation an amended abstract of judgment for defendant Isaiah Henderson reflecting that on count 5, the trial court imposed a five-year term pursuant to section 667, subdivision (a)(1). In all other respects, the three judgments are affirmed.

Willhite, J.

We concur: Epstein, P.J.

Manella, J.

B209694 People (Not for Publication)

v.

Escobar

The judgment is affirmed.

Manella, J.

We concur: Epstein, P.J.

Willhite, J.

# **DIVISION FOUR (continued)**

B210283 People (Not for Publication)

v. Toth

The judgment is affirmed.

Suzukawa, J.

We concur: Epstein, P.J.

Manella, J.

B214640 Los Angeles County, D.C.F.S. (Not for Publication)

v.

Jose H.

The March 11, 2009 order terminating father's parental rights is affirmed.

Manella, J.

We concur: Epstein, P.J.

Willhite, J.

B210349 Rosario (Not for Publication)

V.

County of Los Angeles

The judgment (order of dismissal) is affirmed. Respondent(s) to recover

costs.

Willhite, J.

We concur: Epstein, P.J.

Suzukawa, J.

#### DIVISION FOUR (continued)

B210621 Rodriguez (Not for Publication)

v. Cortz

For the reasons discussed above, the judgment is not severable. Therefore, the entire judgment is reversed. Appellant shall recover her costs on appeal.

Because the evidence was insufficient to support the jury's verdict that Dena breached the contract alleged by Raul, on remand Raul may not retry his cause of action for breach of contract. "When the plaintiff has had full and fair opportunity to present the case, and the evidence is insufficient as a matter of law to support plaintiff's cause of action, a judgment for defendant is required and no new trial is ordinarily allowed, save for newly discovered evidence. (See Code Civ. Proc., §§ 629, 657; 8 Witkin, Cal. Procedure (3d ed. 1985) Attack on Judgment in Trial Court, § 18 et seq.) [Fn. omitted.]" (McCoy v. Hearst Corp. (1991) 227 Cal.App.3d 1657, 1661; see also Cardinal Health 301, Inc. v. Tyco Electronics Corp. (2008) 169 Cal. App. 4th 116, 153 ["If the plaintiff had a 'full and fair opportunity' to present the supporting evidence, and the evidence was insufficient as a matter of law to support a damage award, a reviewing court may strike the award without ordering a retrial."].) Accordingly, we direct the trial court to enter judgment for Dena on Raul's breach of contract claim. The remaining causes of action alleged in the complaint and crosscomplaint shall be set for retrial. (E.g., Gapusan v. Jay (1998) 66 Cal.App.4th 734, 743 [""[A]n unqualified reversal remands the cause for a new trial [citation], and places the parties in the trial court in the same position as if the cause had never been tried, with the exception that the opinion of the court on appeal must be followed so far as applicable." [Citations.]' [Citation.]"].) On retrial, the parties may urge all of the theories advanced during the first trial, except that Raul may not contend that he and Dena had an express oral contract for \$20,000 per year. We express no opinion as to whether the parties may amend their pleadings.

Suzukawa, J.

We concur: Epstein, P.J.

Willhite, J.

#### **DIVISION FOUR (continued)**

B211396 Wells Fargo Bank, N.A. (Not for Publication)

v.

Camden Properties, LTD.

The order denying the petition for appointment of an appraiser is reversed, and the superior court is directed to enter a new and different order granting the petition. Wells Fargo shall recover its costs on appeal.

Suzukawa, J.

We concur: Willhite, Acting P.J.

Manella, J.

#### **DIVISION SIX**

B208062 Rands (Certified for Publication)

V.

Rands

The order is affirmed. Respondent shall recover costs on appeal.

Gilbert, P.J.

We concur: Yegan, J.

Coffee, J.

B213942 People (Not for Publication)

v.

Mejia

We will modify the judgment to reduce the section 290.3 fine to \$1,800, and add additional penalties and surcharges of \$4,500 for a total obligation of \$6,300. Otherwise, we affirm.

Perren, J.

We concur: Gilbert, P.J.

Coffee, J.

# **DIVISION SIX (continued)**

B211431 Burlage

v.

Ventura Co. Superior Court (Spencer)

Filed order granting petition for rehearing. Cause resubmitted.

**DIVISION SEVEN** 

B204115 Yeakel (Not for Publication)

v.

Farmers Insurance Group of Insurance Companies, et al.,

The judgment is affirmed. Farmers shall recover its costs on appeal.

Zelon, J.

We concur: Perluss, P.J.

Jackson, J.

B209893 Krivin (Not for Publication)

v.

Muleshkov

The order is affirmed. Appellant is to bear his costs on appeal.

Zelon, J.

We concur: Perluss, P.J.

Woods, J.

#### **DIVISION SEVEN (continued)**

B213368 Los Angeles County, D.C.F.S.

(Not for Publication)

v.

J. D.

The juvenile court's finding of domestic violence is reversed. In all other respects, the dispositional order is affirmed.

Jackson, J.

We concur: Woods, Acting P.J.

Zelon, J.

B205718 People

(Not for Publication)

v.

Steinberg, et al.

The restitution order against Steinberg and Weaver made pursuant to section 1202.4 is reversed and the matter is remanded to the trial court for reconsideration on (1) the amount of restitution to be paid by Weaver under section 1202.4, subdivisions (b) and (f), and (2) whether any direct victim restitution to be paid by Weaver and Steinberg under section 1202.4, subdivision (f) should be joint and several. On remand, the trial court further is directed to strike the \$10,000 victim restitution fine imposed against Weaver under section 1203.04 and the state court construction penalties imposed against both Steinberg and Weaver under Government Code section 70372. In all other respects, the judgment is affirmed.

Zelon, J.

We concur: Perluss, P.J.

Jackson, J.

# **DIVISION SEVEN (continued)**

B211832 People (Not for Publication)

v. Valian

The order is affirmed.

Jackson, J.

We concur: Perluss, P.J.

Woods, J.

B210497 People (Not for Publication)

v.

Williams

The judgment is affirmed.

Woods, Acting P.J.

We concur: Zelon, J.

Jackson, J.

#### **DIVISION EIGHT**

Court convened at 9:00 a.m.

Present: Rubin, Acting P.J., Flier, J., Bigelow, J., Mohr, J. (Assigned) and Emma Jean Amos, Deputy Clerk.

Each of the following:

B214568 DCFS v. J.K.

B212970 People v. Watkins

B211213 DCFS v. C.M.

B213502 People v. B.M.

B215041 DCFS v. L.C.

# **DIVISION EIGHT (continued)**

Each of the following (continued)

B215421 People v. X.A. B209631 People v. Caraway B214137 DCFS v. J.R.

Argument waived, cause submitted.

B208779 Los Angeles County, D.C.F.S.

v. G.C.,

Appearances:

Tammy Y. Nakaka appeared for respondent and argument previously waived by appellant. Argument waived, cause submitted.

B203902 Patricia Fernandez, et al.,

V.

**SPV** Water Company

Merits:

Argued by Frank E. Marchetti for appellants and by David L. Brandon for respondent. Cause submitted.

B207703 Jeffrey Stenfors, et al.

v.

Christopher S. Banning

Merits:

Argued by James Goldman for appellant and by Karol H. Ingber for respondents. Cause submitted.

#### DIVISION EIGHT (continued)

B212761 Princess Cruise Lines, LTD.,

v.

Superior Court, Los Angeles County

(H. Roger Wang, et al., r.p.i.)

Merits:

Argued by Andre M. Picciurro for petitioner and by Mohammed K. Ghods for real parties in interest. Cause submitted.

B210233 People

v.

Abel Castaneda

Merits:

Argued by James Koester for appellant and by Tita Nguyen, Deputy

Attorney General for respondent. Cause submitted.

B212358 People

v.

Victor Flores

Merits:

Argued by William S. Pitman for appellant and by Sharlene Honnaka, Deputy Attorney General for respondent. Cause submitted.

Rubin, J. leaves the bench.

B209213 Angela Cameron, et al.

v.

Beneficial California, Inc., et al.

Merits:

Argued by James Hester for respondent US Bank Home Mortgage, et al. and appearances only by Evan Dwin and Paul N. Gautreau. Appellants Water & Power Credit Union previously waived argument. Cause submitted.

# **DIVISION EIGHT (continued)**

B209912 Twin Med, LLC

v.

JPH Management et al.,

Merits:

Argued by Matthew C. Heyn for appellant and by Robert Peter Weiss for respondents. Cause submitted.

Flier, J. leaves the bench.

Rubin, J. returned to the bench.

B201113 Oakhurst Industires, Inc.,

V.

Tubway Associates, L.P.,

Merits:

Argued by Michael R. Leslie for appellant and by Howard E. King for respondent. Cause submitted.

Court Adjourned.

B209506 People (Not for Publication)

v.

Brownlee

The judgment is affirmed.

Rubin, Acting P.J.

We concur: Flier, J.

Bigelow, J.

# **DIVISION EIGHT (continued)**

B207542 People (Not for Publication)

v.

Ann Darlene Wernke

The judgment is affirmed.

Bigelow, J.

We concur: Rubin, Acting P.J.

Flier, J.

B217029 J.B., (Not for Publication)

v.

Superior Court, Los Angeles County

(Los Angeles County Dept. of Children & Family Services, r.p.i.)

The writ petition is denied on the merits. This opinion is final forthwith as to this court. (Cal. Rules of Court, rule 8.8.490(b) (3).)

Bigelow, J.

We concur: Rubin, Acting P.J.

Flier, J.